



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

Jeffery A. Steers
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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

TBR ASSOCIATES LIMITED PARTNERSHIP

SECTION A: Purpose

This is a Consent Order issued under the authority of Section 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and TBR Associates Limited Partnership, for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia and described in Va. Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
7. "TBR Associates" means TBR Associates Limited Partnership a limited partnership registered

and authorized to do business in Virginia.

SECTION C: Finding of Facts and Conclusions of Law

1. TBR Associates Limited Partnership is a limited partnership organized and existing under the laws of Virginia. Its principal place of business is located at 1228 Thirty-first Street NW, Washington, DC. TBR Associates owns a parcel of property located at 1712 Fern Street, Alexandria, Virginia (Property). At the Property TBR Associates leases space in a commercial building development known as "Fairlington Centre" to various business, including a dry cleaning business known as "Fairlington Cleaners".
2. On October 29, 2004, TBR Associates submitted an application to enroll the Fairlington Centre property in Virginia's Voluntary Remediation Program (VRP) pursuant to Va. Code § 10.1-1429.1, *et seq.* The VRP application included soil and groundwater data that showed the presence of perchloroethylene (PCE), a chemical typically used by dry cleaners, and trichloroethylene (TCE), a chemical created through the degradation of PCE, at levels that exceed the maximum contaminant level (MCL).
3. Based on the information in the VRP application, DEQ NVRO staff inspected Fairlington Cleaners on November 30, 2004. During the inspection DEQ documented several apparent violations of the hazardous waste regulations by a tenant at the property, most notably that the dry cleaner stated that he had been pouring separator water from the dry cleaning machine on the ground behind the building. Dry cleaning separator water typically contains PCE.
4. Engineering Consulting Services, Ltd, (ECS), a company hired by TBR Associates to conduct a site assessment of the Property for the VRP application, routinely poured purge water from the monitoring wells on the ground without making a waste determination in accordance with 40 CFR 262.11. Analytical test results show that the purge water contained PCE and TCE at levels exceeding the maximum concentration limits for the toxicity characteristic in accordance with 40 CFR 261.24(b).
5. The dry cleaning separator water and purged well water containing PCE when discarded, spilled, leaked, released, or discharged into the environment constitute "solid wastes" pursuant to Va. Code § 10.1-1400, 9 VAC 20-80-10, 9 VAC 20-80-140, and 40 CFR 261.2.
6. The dry cleaning separator water and purged well water which were disposed of by being dumped on the ground are "hazardous wastes" pursuant to Va. Code §10.1-1400, 40 CFR 261.3 and 9 VAC 20-60-261 because they contained PCE and TCE at levels exceeding the maximum concentration limits for the toxicity characteristic in accordance with 40 CFR 261.24(b).

7. Pursuant to Va. Code §10.1-1426, 9 VAC 20-60-270, and 40 CFR 270.1 a person is required to have a permit from the Director to treat, store, or dispose hazardous waste.
8. Because TBR Associates does not have a permit from the DEQ to treat, store, or dispose hazardous waste, DEQ asserts that TBR Associates has violated Va. Code 10.1-1426, 9 VAC 20-60-70, and 40 CFR 270.10.
9. The Property is a "facility" as that term is defined by 9 VAC 20-60-260 and 40 CFR 260.10.
10. DEQ issued a Notice of Violation (NOV) to TBR Associates on May 9, 2005 informing TBR Associates that ECS had improperly managed hazardous wastes on the Property and that the Property was an unpermitted hazardous waste disposal facility pursuant to Va. Code 10.1-1426, 9 VAC 20-60-70, and 40 CFR 270.10.
11. Because TBR is an "owner," as that term is defined by 9 VAC 26-260 and 40 CFR 260.10, of an unpermitted hazardous waste treatment, storage, and disposal facility, it is required to comply with the provisions contained in 9 VAC 20-60-265, 9 VAC 20-70, and 40 CFR 265.90-150 relating to groundwater monitoring, closure of a hazardous waste facility, and financial assurance.

SECTION D: Agreement and Order

Accordingly the Virginia Waste Management Board, by virtue of the authority granted it in Va. Code § 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455, orders TBR Associates, and TBR Associates voluntarily agrees that it shall perform the actions described in Appendix A to this Order to remedy the alleged violations described above and achieve compliance with the Virginia Hazardous Waste Management Regulations.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of TBR Associates, for good cause shown by TBR Associates, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on May 9, 2005 as listed above in Section C10. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any subsequent, or subsequently discovered violations; (2) seeking subsequent remediation as may

be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, TBR Associates admits the jurisdictional allegations, but does not admit the factual findings and conclusions of law contained herein.
4. TBR Associates consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. TBR Associates acknowledges that it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the Virginia Waste Management Act, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and, for purposes of this Consent Order, to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by TBR Associates to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. TBR Associates shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. TBR Associates shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. TBR Associates shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order.

Such notice shall set forth:

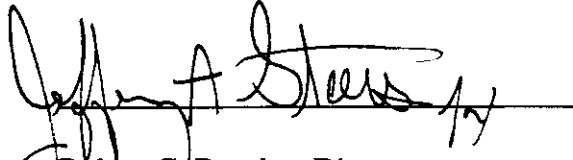
- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.


Failure to so notify the Regional Director within 24 hours of learning of any condition above, which TBR Associates intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. Any plans, reports, schedules, permits, or specifications attached hereto or submitted by TBR Associates and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall become effective upon execution by both the Director or his designee and TBR Associates. Notwithstanding the foregoing, TBR Associates agrees to be bound by any compliance date, which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to TBR Associates. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve TBR Associates from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. By its signature below, TBR Associates voluntarily agrees to the issuance of this Order.
14. The undersigned representative of TBR Associates certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind TBR Associates to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of TBR Associates

And it is so ORDERED this day of JANUARY 3rd, 2005.⁶


Robert G. Burnley, Director
Department of Environmental Quality

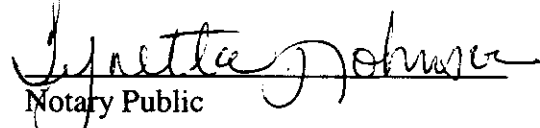
TBR Associates voluntarily agrees to the issuance of this Order.

By: 
George A. Valanos
TBR Associates

Date: 10-31-05

District
Commonwealth of Virginia
City/County of Columbia

The foregoing document was signed and acknowledged before me this 31st day of
October, 2005, by George A. Valanos on behalf of TBR Associates


Notary Public

My commission expires: 8-14-08

APPENDIX A SCHEDULE OF COMPLIANCE

1. Within 90 days of the effective date of this Order, the TBR Associates shall submit the following to the DEQ for its review and approval:
 - a. A written groundwater monitoring plan which meets the requirements of 40 CFR 265.90(d). The groundwater monitoring plan must also comply with 40 CFR 265.91 (relating to groundwater monitoring system), 40 CFR 265.92 (relating to Sampling and Analysis), 40 CFR 265.93 (relating to preparation, evaluation and response), and 40 CFR 265.94 (relating to recordkeeping and reporting).
 - b. A written plan and schedule (Closure by Removal Plan) to remove or decontaminate all waste residues, contaminated containment systems, contaminated sub-soils and structures and equipment contaminated with waste and leachate and manage them as hazardous waste. The Closure and Removal Plan shall be in accordance with 9 VAC 20-60-265, 40 CFR 265 subpart G, 40 CFR 270.1(c)(5), and 40 CFR 264.228. At the least, the Closure by Removal Plan should describe ways that TBR Associates plans to remove and/or decontaminate the waste residues, sub-soils and structures at and near the Area of Concern. The Closure by Removal Plan shall also include the sampling protocol and analysis for testing, at least, the waste residues, sub-soils and structures, to test for the presence of contaminants, including but not limited to PCE and TCE.
 - c. Evidence of financial assurance in accordance with 9 VAC 20-60-265 for Fairlington Centre. TBR Associates shall modify the amount of such financial assurance as necessary in response to any modifications of the closure plan approved of by the Department.
2. Within 14 days after DEQ approves the groundwater monitoring plan and Closure by Removal Plan, TBR Associates shall implement them. The groundwater monitoring plan and Closure by Removal Plan may be amended as necessary with DEQ approval.
3. If Fairlington Centre is closed in accordance with the terms and schedule of the approved Closure by Removal Plan, TBR Associates shall provide the DEQ owner/operator and professional engineer certifications as required by 40 CFR 265.115 within 60 days of completion of final closure.
4. If closure in accordance with the Closure by Removal Plan cannot be achieved TBR Associates shall within 30 days submit to the DEQ a permit application and required application fees for groundwater monitoring, Corrective Action and, post-closure care, as applicable, pursuant to 9 VAC 20-60-270.

5. If TBR Associates is required to obtain a permit for post-closure, which may include corrective action for the entire Property, TBR Associates shall comply with the permit. Upon issuance of the permit by DEQ, TBR Associates may request that DEQ consider termination of this Consent Order.
6. TBR Associates shall respond to any Notice of Deficiencies issued with respect to the groundwater monitoring plan, the closure and post-closure plans, and/or the permit application by the time period provided in the Notice unless TBR Associates has both requested and received an extension.